THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.3362 of 2005

Dated: 27.06.2006

Between
K.V.Mohan Rao

…..Petitioner

and

1. State of A.P., rep., by the Superintending Engineer, Irrigation Circle,
Irrigation & Command Area,
Development Department,
Vijayawada and another.

….Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.3362 of 2005

ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the respondents in not releasing certain amounts in terms of the final bill relating to the Agreement No.28SE/2004-05, dated 18.8.2004 as arbitrary and illegal and consequently direct the respondents to release the amounts due and payable in terms of the final bill.

It is the case of the petitioner that he was entrusted with a contract work by the respondents under the agreement. He has completed the work and thereafter, the final bill was prepared. However, while settling the bills, an amount of Rs.2,60,327/- was withheld stating that the same is liable to be recovered in view of the earlier contract entered into between the parties vide agreement No.49/SE/1999-2000 dated 05.07.1999 for a different work.

A counter affidavit has been filed by the 2nd respondent stating that it is true that an amount of Rs.2,60,327/- was deducted towards recoveries from the final bill as instructed by the Superintendent Engineer, Irrigation Circle, Vijayawada vide his letter dated 17.09.2004 as the amount was pending in the Drainage Division, Gudivada under Agreement No. 49SE/1999-2000 and the said amount was deposited in the Government accounts for onward transmission to Drainage Division Gudivada. It is further stated that the said amount of

Rs.2,60,327/- was recovered as per the clause 3.3. and 3.4 in Agreement No.28 SE/2004-2005.

Heard the learned counsel on either side..

There is no dispute that letter dated 17.09.2004 was addressed to the Executive Engineer, K.C. Division, Vijayawada from the office of the Superintending Engineer, Irrigation Circle, Vijayawada stating that there is an element of unloading charges and T.O.T in the estimate. The discrepancy arose on the payment of unloading charges and T.O.T was not accepted by the Government. Further, the Government has directed to recover the excess payment towards unloading charges and T.O.T from the contractor vide Government Memo No.16340/CAD/SER.II/2/2000-9, dated 1.5.2003, accordingly, an amount of Rs.2,60,327/- is to be recovered and remitted to the Government. Thereafter, on a dispute being raised by the petitioner, the matter was referred to the technical expert for his enquiry and decision. The Technical Expert after going through the details on each and every aspect came to the conclusion that the recovery proposed by the SE for Rs.3,28,792/- is illegal and therefore, it should not be recovered. The recovery already made for Rs.68,465/- shall be refunded along with interest of l2% per annum from the effected date of recovery. However, there is no necessity to recover the extra TOT charges of Rs.9,337/- as the recovery already made vide Final bill paid is according to clarification given by Commercial Tax Department which is to be implemented as per the conditions of the agreement.

The Summary, Conclusion and Decision of technical expert dated 30.10.2004 attained finality, but the same has not been taken into consideration by the authorities for the purpose of

settling the final bill of the petitioner.

In view of the above, the respondents are directed to consider the Summary, Conclusion and Decision of the technical expert dated 30.10.2004 which attained finality and decide as to whether there is any necessity to recover the said amount of Rs.2,60,327/- from the final bill of the petitioner against the Agreement No.28 SE/2004-2005 within a period of one month from the date of receipt of a copy of this order and communicate the same to petitioner.

Writ petition is disposed of accordingly. No costs.

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27.06.2006

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